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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 ULTRATECH, INC.,

No. C 03-03235 CRB

12 Plaintiff,

**ORDER**

13 v.

14 TAMARACK SCIENTIFIC CO.,

15 Defendant.  
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17 On May 17, 2005, the Court issued a Memorandum and Order granting Tamarack  
18 Scientific's motion for summary judgment of invalidity on all claims on which the Court had  
19 previously granted summary judgment of infringement. After considering the parties'  
20 submissions on what, if anything, remains to be tried in this case, the Court concludes that no  
21 trial is necessary and that judgment should be issued forthwith.

22 The Court will not address Tamarack's motion for summary judgment on the  
23 withdrawn models. As the models were not included in Ultratech's Final Infringement  
24 Contentions they are not at issue in this case.

25 The Court declines Tamarack's invitation to hold a bench trial on its inequitable  
26 conduct defense. The Court will not hold a bench trial based on the possibility that Ultratech  
27 may in the future file claims that it withdrew from this lawsuit. If the appellate court  
28 reverses any of the Court's rulings in this matter, the inequitable conduct issue can be

1 addressed at that time. See Tamarack's Memorandum at 2 n.1.

2 Finally, the Court may consider Ultratech's alleged inequitable conduct in connection  
3 with Tamarack's motion for attorneys' fees without holding a bench trial on Tamarack's  
4 inequitable conduct defense. After reviewing the parties' submissions in connection with  
5 any post-trial motion for attorneys' fees, the Court can determine if an evidentiary hearing is  
6 necessary and, if so, the scope of such hearing.

7 Accordingly, the June 6, 2005 trial date is VACATED.

8 **IT IS SO ORDERED.**

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10 Dated: May 23, 2005

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/s/  
CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California